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10/568,600

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Marinus Johannes Van Den Elzen

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EXAMINER

PARADISO, JOHN ROGER

ART UNIT

PAPER NUMBER

3721

NOTIFICATION DATE

DELIVERY MODE

07/08/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ecofficemonitor@woodcock.com

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/568,600 | <b>Applicant(s)</b><br>VAN DEN ELZEN ET AL. |  |
|                              | <b>Examiner</b><br>John Paradiso     | <b>Art Unit</b><br>3721                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-12,15,17-27 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-12,15,17-27 and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request filed on 6/8/2011 for a Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/568600 is acceptable and a CPA has been established. An action on the CPA is attached.

1-2, 4-5, 7-12, 15, 17-27, 29-32

### ***Claim Rejections***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-5, and 9-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980) in view of TAMPIERI (US 2002/0157355) and SMITH (US 5001880).

KENNEY ET AL discloses a method and apparatus for packaging tea in which a first sheet of heat-sealable material (4) is fed and used as a bottom sheet. Portions of tea (7) are placed on the bottom sheet and then covered by a separate top sheet (5). The top and bottom sheet are fed together between synchronized rotating sealing rollers (8, 10). The sealing roller (8) has heated ribs that run transversely to the direction of film motion and seal the sheets together at the edges of each package (see column 6:25-34 and Fig. 1). The sealing ribs rotate with the roller but are travelling at the same linear speed as the film when they make contact.

KENNEY ET AL does not disclose one of the sheets to be pre-shaped to fit the product.

TAMPIERI discloses a method and apparatus for packaging in which a film (1) is fed to a forming station (6) at which time it is pre-shaped to fit products, which are inserted at a later point (see Abstract and Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of KENNEY ET AL by pre-forming one of the sheets to fit the product, as taught by TAMPIERI, in order to provide a more attractive packaging for the products.

The combination of KENNEY ET AL and TAMPIERI does not disclose folding the sides of the sealed sheets upward for stability.

SMITH discloses a method of packaging in which the edge of each package is formed upward to add rigidity (see Fig. 1A and column 3:20-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of KENNEY ET AL and TAMPIERI by folding the edges of the finished package upward for added stability, as taught by SMITH.

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Regarding claim 2, the rotating frame is being read on the frame of the roller, which has an axis of rotation transverse to the film transport direction (see Fig. 2).

Regarding claim 4, TAMPIERRI discloses a pre-forming station that moves in a reciprocating manner. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of KENNEY ET AL and TAMPIERRI to exchange the reciprocating pre-forming station for a set of top and bottom rotating rollers in order to increase the speed and throughput of the machine, since forming rollers are already taught by KENNEY ET AL elsewhere in the invention.

Regarding claim 5, the pre-shaping station in the combination of KENNEY ET AL and TAMPIERRI do provide part of the impetus for the sheet to move downstream, where the product is on the sheet.

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4. Claims 6, 12, 15, and 17-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980) in view of JOHNSON ET AL (US 5752365), as set forth in paragraph 4 of the previous Office Action and reprinted below for convenience:

KENNEY ET AL discloses method and apparatus for packaging, as described above.

KENNEY ET AL does not disclose the products being elongated in form and positioned transversely to the moving sheets.

JOHNSON ET AL discloses a method and apparatus for processing bandoliers (20) of candy bars (18) (see column 4:54-58 and Fig. 2 and 3). The bandoliers are formed from a top sheet (122) and a bottom sheet (124) of film (column 4:28-53) with seals around and between the parallel, horizontally disposed candy bars.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of KENNEY ET AL to provide elongate products and place them transversely on the moving sheets, as taught by JOHNSON ET AL, in order to provide a wider variety of uses for the invention and to increase the types of products that can be packaged and sold to consumers.

The combination of KENNEY ET AL and JOHNSON ET AL does not disclose folding the sides of the sealed sheets upward for stability.

SMITH discloses a method of packaging in which the edge of each package is formed upward to add rigidity (see Fig. 1A and column 3:20-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of KENNEY ET AL and JOHNSON ET AL by folding the edges of the finished package upward for added stability, as taught by SMITH.

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Regarding claim 12, joining two sheets by folding the edge over (up, in this case) and heat-sealing the edges are art-recognized equivalents in the packaging arts for joining sheets and it would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the edge(s) of the joined sheets up and over in order to provide redundancy and increased strength in the bond.

Regarding claim 15, the combination of KENNEY ET AL and JOHNSON ET AL does not disclose perforating between the products during sealing. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations as part of the lateral seals of the combination of KENNEY ET AL and JOHNSON ET AL in order to make the individual packages easier to separate for a user, since heat seals and perforations are art-recognized equivalents for edge seals in the packaging arts. The parallel items disclosed in JOHNSON ET AL are being read as a bandolier.

Regarding claim 17, since JOHNSON ET AL discloses the packaging of candy bars which are typically not perfectly cylindrical, the product of the combination of KENNEY ET AL and JOHNSON ET AL would inherently be asymmetric about a horizontal plane.

Regarding claim 18, each sheet of the completed wrapped items has a profile of an inverted U-shape when viewed from the side.

Regarding claim 19, Fig. 1 of KENNEY ET AL clearly shows the underside as flat and laid on a flat surface as it is fed to the feed station.

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Regarding claim 20, the product in the combination of KENNEY ET AL and JOHNSON ET AL appear to be spaced less than the height of each item. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the distance between the items in the combination of KENNEY ET AL and JOHNSON ET AL to be less than the height of each item in order to conserve space and packing material, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 21, Fig. 4 of JOHNSON ET AL clearly show the transverse seals as parallel to the longitudinal axes of the packaged candy bars.

Regarding claim 22, Fig. 4 of JOHNSON ET AL clearly show the lower sheet as parallel to the plane containing the longitudinal axis of the packaged candy bars.

Regarding claim 23, the bottom sheet in the combination of KENNEY ET AL and JOHNSON ET AL is being read as relatively rigid, since it is strong enough to hold and contain the product.

Regarding claim 24, the use of plastic-coated cardboard and plastic film are art-recognized equivalents for packaging foodstuffs in the packaging arts and it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottom sheet in the combination of KENNEY ET AL and JOHNSON ET AL out of plastic-coated cardboard in order to provide a more traditional look for the package of a candy bar, thus increasing customer appeal.



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Regarding claim 26, joining two sheets by folding the edge over (up, in this case) and heat-sealing the edges are art-recognized equivalents in the packaging arts for joining sheets and it would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the edge(s) of the joined sheets up and over in order to provide redundancy and increased strength in the bond.

Regarding claim 27, Fig. 4 of JOHNSON ET AL clearly show the upper film extending from one transverse seal, over the packaged candy bar, to the next transverse seal.

Regarding claim 29, since JOHNSON ET AL discloses the packaging of candy bars which are typically not perfectly cylindrical, the product of the combination of KENNEY ET AL and JOHNSON ET AL would inherently be asymmetric about a horizontal plane.

Regarding claim 30, each sheet of the completed wrapped items has a profile of an inverted U-shape when viewed from the side.

Regarding claim 31, Fig. 1 of KENNEY ET AL clearly shows the underside as flat and laid on a flat surface as it is fed to the feed station.

Regarding claim 32, the product in the combination of KENNEY ET AL and JOHNSON ET AL appear to be spaced less than the height of each item. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the distance between the items in the combination of KENNEY ET AL and JOHNSON ET AL to be less than the height of each item in order to conserve space and packing material, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

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5. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980) in view of LEMELSON (US 3684614)., as set forth in paragraph 5 of the previous Office Action and reprinted below for convenience:

KENNEY ET AL discloses method and apparatus for packaging, as described above.

KENNEY ET AL does not disclose the sealing ribs having ultrasonic sealing means.

LEMELSON discloses a method and apparatus for packaging products in which top and bottom sheets (11, 12) are passed and moved by means of rollers (14, 15), shaped and treated by succeeding rollers (35, 36) and formed into individual packages by means of rotating sealing rollers (39, 45). The individual packages are then welded laterally and longitudinally by heat or ultrasonic welding (column 4:45-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of KENNEY ET AL to use ultrasonic sealing means in the ribs, as taught by LEMELSON, in order to reduce the amount of radiant heat in the vicinity of the products, reducing the possibility of spoilage of the product due to heat.

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6. Claims 8 and are rejected under 35 U.S.C. § 103(a) as being unpatentable over KENNEY ET AL (US 5459980), as set forth in paragraph 6 of the previous Office Action and reprinted below for convenience:

KENNEY ET AL discloses method and apparatus for packaging, as described above.

KENNEY ET AL does not disclose perforating between the products during sealing.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations as part of the lateral seals of the invention of JOHNSON ET AL in order to make the individual packages easier to separate for a user, since heat seals and perforations are art-recognized equivalents for edge seals in the packaging arts.

### **Response to Arguments**

7. Applicant's arguments filed 3/10/2011 have been fully considered but they are not persuasive.

8. Applicant states on page 11 of his Response that "Modifying Kenney to satisfy the limitations of claim 1 would impermissibly change the object and fundamental principle of Kenney. For example, Kenney could not modified to achieve "an array of removable enclosures" nor "separating the products into arrays of multiple, connected products."

However, each of the bags in the prior art rejection is considered a removable enclosure.

9. Applicant states on page 11 of his Response that “Further, Kenney' s fundamental principle would have to be impermissibly discarded to satisfy the limitations of, for example: claim 8: "the packaged products stay attached to each other, but can be easily separated," claim 12 : "the sealed areas between the products are weakened, such that the packaged products can be easily separated" ..”

However, as explained in the rejection above, “it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations as part of the lateral seals of the combination of KENNEY ET AL and JOHNSON ET AL in order to make the individual packages easier to separate for a user, since heat seals and perforations are art-recognized equivalents for edge seals in the packaging arts. The parallel items disclosed in JOHNSON ET AL are being read as a bandolier.”

10. Applicant states on page 13 of his Response that “Lemelson, however, should be interpreted to teach heat sealing rather than ultrasonic welding.”

However, LEMELSON does disclose the individual packages are then welded laterally and longitudinally by heat or ultrasonic welding (column 4:45-52).

Additionally, Applicant is reminded that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history,

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prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John R Paradiso/

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Examiner John Paradiso: (571) 272-4466

July 5, 2011

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)